

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

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**MICHAEL M. MARTINEZ,**

Plaintiff,

No. CV 09-580-ST

v.

OPINION AND ORDER

**MAX WILLIAMS (Director, Oregon Department  
of Corrections); MARK NOOTH (Superintendent  
Snake River Correctional Institution); SNAKE  
RIVER CORRECTIONAL INSTITUTION  
TOWER SHOOTER "X" (NUNN or DUNN?),**

Defendants.

**MOSMAN, J.,**

On November 9, 2010, Magistrate Judge Stewart issued her Findings and Recommendation ("F&R") (#69) in the above-captioned case recommending that I deny Martinez's Motion for Summary Judgment (#36) and grant defendants' Cross Motion for Summary Judgment (#45). Plaintiff filed objections (#74) to which defendants filed a response (#75).

**DISCUSSION**

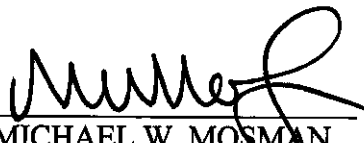
The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation in every respect, and I ADOPT Judge Stewart's F&R (#69) as my own, I DENY plaintiff Martinez's Motion for Summary Judgment (#36), and I GRANT defendants' Cross Motion for Summary Judgment (#45).

IT IS SO ORDERED.

DATED this 5 day of January, 2011.

  
MICHAEL W. MOSMAN  
United States District Court